

9-41.000 BANKRUPTCY FRAUD

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9-41.010 Report of Violations of Bankruptcy Fraud

Section 3057(a) of Title 18, United States Code, requires a judge, receiver or trustee having reasonable grounds for believing that any violation of laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, to report all the facts and circumstances to the appropriate United States Attorney. Upon receipt of this report, the United States Attorney determines whether an investigation should be commenced; and upon completion of this investigation, the United States Attorney decides whether criminal action is warranted. A report by a judge, receiver or trustee of possible violations is not a condition precedent to the initiation of an investigation.

When a matter referred to the United States Attorney pursuant to 18 U.S.C. § 3057(a) by a judge, receiver or trustee is declined, 18 U.S.C. § 3057(b) requires that the United States Attorney "report the facts of the case to the Attorney General for his direction." This statutory directive is satisfied by providing the Fraud Section, Criminal Division, with a concise summary of the facts of the case and the reasons for declining it. Concurrence with the decision to decline may be presumed if no disagreement is expressed by the Fraud Section.

The personal opinion of the judge or trustee as to whether a criminal offense has occurred or as to whether criminal proceedings should or should not be commenced is in no way binding on the United States Attorney or determinative of the issues involved. Similarly, the decision of an officer of the Bankruptcy Court not to refer a matter to the United States Attorney should not be determinative in any prosecutive analysis.